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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUN 26 2007
SRC 05 264 52155

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maura Deadrick
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research associate. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we uphold the director's ultimate decision although more discussion of the evidence submitted is warranted.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Biophysics from the University of Calcutta. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The director did not contest that the petitioner works in an area of intrinsic merit, cancer research, or that the proposed benefits of her work, improved prevention, diagnosis and treatment of cancer, would be national in scope. Rather, the director concluded that "the issue in this case is not whether cancer research is in the national interest, but whether the [petitioner], to a greater extent than U.S. workers having the same qualifications, plays a significant role."

We concur with the director that the importance of the petitioner's area of research alone is insufficient to warrant a waiver of the alien employment certification process in the national interest. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important

that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218.

The director then included a "qualifications discussion." In this section, the director reiterated that simply qualifying for the job is insufficient. The director then concluded that the petitioner had demonstrated that she is a competent researcher whose skills and abilities are of value to her employer but had not established that a waiver of the job offer was warranted in the national interest because simply playing an important role in cancer research is insufficient.

We concur with the director that it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

More specifically, at issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

Several of the petitioner's references focus on the national importance of the petitioner's area of research and speculate as to how the petitioner's work might influence the field in the future. Thus, the director's emphasis that the importance of the petitioner's area of research is insufficient is justified. Some references, however, do assert that the petitioner has already achieved groundbreaking results. We will address these assertions on appeal.

[redacted], a professor at Vanderbilt University, asserts that the petitioner's new data on cadmium "could also call into question current regulatory standards for cadmium exposure." The record, however, contains no evidence that the World Health Organization (WHO), which issued the standards, is considering revising these standards in light of the petitioner's work.

[redacted] further asserts that the petitioner's recent publications "have been cited in several articles published by other prestigious journals in the field." Considering that the regulation at 8 C.F.R. § 103.2(b)(2) requires primary evidence unless such evidence is demonstrably unavailable or does not exist, it is the petitioner's burden to submit a citation index or other primary evidence of these citations. The record contains no such evidence.

Similarly, [redacted] an associate professor at the University of Missouri-Kansas City, asserts that "other researchers are able to use [the petitioner's] findings in their own projects." [redacted], a professor at the Universidad de Puerto Rico, asserts that the petitioner's work has "opened new avenues in cancer research." [redacted], a professor at the University of Kentucky, asserts that the petitioner's results have "scientific and commercial potential." These

references, however, do not identify independent research teams that are not only aware of the petitioner's work but are applying it in their own work and the record contains no letters from members of these independent research teams.

In addition, [redacted], a professor at St. John's University, asserts that the petitioner "has developed a biomarker for cancer diagnosis." On appeal, [redacted], a professor at Meharry Medical College, asserts that the petitioner's work "has the potential to be quickly translated from the laboratory bench to the cancer clinic." Original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Matter of New York State Dep't of Transp.* 22 I&N Dec. at 221, n. 7. The record, however, contains no evidence that the biomarker developed by the petitioner, or any other innovation, is in the process of being clinically applied or even evaluated for clinical use nationwide.

On appeal, the petitioner submits additional letters, none of which are persuasive. [redacted], an associate professor at the University of Kansas Medical Center, asserts that the petition should be approved because the petitioner works in an important area of research using "modern techniques and experiments." Simple training in advanced technology or unusual knowledge, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221. While the petitioner's employer asserts on appeal that it does not seek alien employment certification for employees in the petitioner's position, nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Id.* at 223. Even if we were to accept that the alien employment certification was inapplicable in this matter, that fact cannot be viewed as sufficient cause for a national interest waiver. The petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. *Id.* at 218, n. 5.

[redacted] a professor at Meharry Medical College where the petitioner is employed, asserts that the petitioner's work "has the potential to be quickly translated from the laboratory bench to the cancer clinic." The record contains no evidence that this has occurred. [redacted] asserts that the petitioner "is really on the way of a breakthrough in this field." While [redacted] discusses the importance of preventative and alternative medical treatments, he does not explain how the petitioner's work is being applied in the field. [redacted] a professor at the University of Notre Dame, asserts that the petitioner "is likely to important consequences for early detection and treatment of different types of cancer in this country as well as in other countries all over the world." The record contains no evidence that government agencies are considering adopting the petitioner's dietary results in nutritional guidelines or similar evidence of application of the petitioner's work.

While [redacted] asserts that the petitioner's work has been "well recognized," he provides no examples of this recognition beyond acceptance for publication and conference presentations. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every

researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

[redacted] a professor of molecular genetics at the University of Missouri, speculates that the petitioner's work "will greatly benefit [the] American people" and "will help us understand" the role of diet in reducing metastasis. [redacted]notes that the petitioner's work is supported by a government grant. Most, if not all, research is supported by funding. In order to receive funding, the research must present some benefit to the general pool of scientific knowledge. It does not follow, however, that every researcher working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

Also on appeal, the petitioner submits reviews of a manuscript submitted for publication and acceptance of two manuscripts for publication, all of which postdate the filing of the petition. The petitioner must establish eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Thus, we cannot consider any results achieved or published after the date of filing without evidence that they had already influenced the field prior to that date.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.